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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 402.

THE MONTANA MINING COMPANY, LIMITED,
PLAINTIFF IN ERROR,

vs.

THE ST. LOUIS MINING AND MILLING COMPANY OF MONTANA, DEFENDANT IN ERROR.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MOTION OF PLAINTIFF IN ERROR TO ADVANCE CAUSE AND NOTICE OF MOTION.

CHARLES J. HUGHES, JR.,
W. E. CULLEN,
Attorneys for Plaintiff in Error.

ALDIS B. BROWNE,
ALEXANDER BRITTON,
Of Counsel.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 23707

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 402.

THE MONTANA MINING COMPANY, LIMITED,
PLAINTIFF IN ERROR,

vs.

THE ST. LOUIS MINING AND MILLING COMPANY OF MONTANA, DEFENDANT IN ERROR.

Comes now the above named plaintiff in error, by Messrs. C. J. Hughes, Jr., W. E. Cullen, Aldis B. Browne and Alexander Britton, its attorneys, and moves the court to advance the above-entitled cause on its calendar and to set the same down for hearing on the merits at as early a day as is practicable, and to postpone the hearing of the petition of the above named plaintiff in error for a writ of mandamus, and for other relief, now pending, until the argument of the said cause upon the merits.

This motion is based upon the rules of practice of this court, upon the former writ of error in said cause, which was fully argued to the court when heretofore submitted (186 U. S., 24), and also upon the record herein, including said petition for mandamus.

The purpose of this motion is to relieve the court from the necessity of twice hearing argument in this cause, inas-

much as the argument upon the return to the pending rule will necessarily embrace much of the case, in order to properly present the same.

Respectfully submitted,

CHAS. J. HUGHES, JR.,
W. E. CULLEN,
Attorneys for Plaintiff in Error.

ALDIS B. BROWNE,
ALEXANDER BRITTON,
Of Counsel.

Service of copy acknowledged this 1st day of November, 1906.

ARTHUR BROWN,
CLAYBERG & GUNN.
THOS. C. BACH,
For Defendant in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 402.

THE MONTANA MINING COMPANY, LIMITED, *Plaintiff in Error,*

vs.

THE ST. LOUIS MINING AND MILLING COMPANY OF MONTANA, *Defendant in Error.*

To the above-named Defendant in Error and Messrs. ARTHUR BROWN, J. B. CLAYBERG, and M. S. GUNN, *Its Attorneys.*

GENTLEMEN: You will please take notice that we have filed in the office of the clerk of said Supreme Court a motion to advance the above-entitled cause on the record of this court, and to set the same down for hearing on the merits at an early date, a copy of which said motion is herewith served upon you. And the said cause will be brought on for hearing on said motion, in the court room of said Supreme Court, in the city of Washington, District of Columbia, on Monday, the 5th day of November, A. D., 1906, at the hour of 12 m., or as soon thereafter as counsel can be heard.

Very respectfully,

CHAS. J. HUGHES, JR.,
W. E. CULLEN,
Attorneys for Plaintiff in Error.

A. B. BROWNE,
ALEXANDER BRITTON,
Of Counsel.

Service of copy acknowledged this 1st day of November, 1906.

ARTHUR BROWN,
For Defendant in Error.

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[illegible] KEENEY,
CLERK.

SUPR[illegible] STATES.

[illegible]

THE [illegible] COMPANY

[illegible]

[illegible]

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 402.

THE MONTANA MINING COMPANY, LIMITED,
PLAINTIFF IN ERROR,

vs.

THE ST. LOUIS MINING AND MILLING COMPANY OF MONTANA, DEFENDANT IN ERROR.

Motion for Certiorari for Diminution of Record under Rule Fourteen.

Comes now the said The Montana Mining Company, Limited, plaintiff in error, by Charles J. Hughes, Jr., W. E. Cullen, Aldis B. Browne and Alexander Britton, its counsel, and suggests diminution of the record in this case in this, to wit:

(1) That the record on file in this cause does not contain a copy of the original complaint filed by the above-named defendant in error in this cause, on the commencement of said action, on or about the 16th day of September, 1893. Nor does it contain a copy of the first amended complaint filed in said action by the defendant in error on or about the 21st day of November, 1898.

(2) And the said Montana Mining Company, Limited, plaintiff in error, by its counsel as aforesaid, in support of said motion, respectfully shows and states that under the Statutes of the State of Montana and the practice of the courts therein established an amended pleading takes the place of and supplants the prior pleading, and this is the practice in the circuit court of the United States for the said district of Montana; that the said cause was tried in said court upon the amended and supplemental complaint, which appears in the record herein, and that such supplemental complaint was, in all respects, sufficient upon the writ of error sued out from the circuit court of appeals of the ninth circuit to the said circuit court of the ninth circuit for the district of Montana, but that it is necessary, in order to ascertain the ground or grounds upon which the federal jurisdiction in this cause was originally invoked, that the record in that court should contain a copy of said original complaint (Mexican Central Ry. Co. *vs.* Pinkney, 149 U. S., 194), and that a copy of said first amended complaint is and will be necessary to enable the plaintiff to present properly a certain objection appearing in the record herein.

Wherefore the said The Montana Mining Company, Limited, plaintiff in error, moves the court, under rule XIV, to award a writ of certiorari to be issued and directed to the judges of the United States circuit court of appeals for the ninth circuit, commanding them that, searching the record and proceedings in said cause, they forthwith certify to this court a copy of the said original complaint filed in this cause on or about the 16th day of September, A. D. 1893, and also a copy of said first amended complaint filed on or about November 21st, 1898, both of which said complaints are so omitted as aforesaid.

W. E. Cullen,
Chas. J. Hughes, Jr.,
Aldis B. Browne,
Alexander Britton,
Counsel for Plaintiff in Error.

DISTRICT OF COLUMBIA, *ss:*

W. E. Cullen, being first duly sworn, says: I am an attorney and counsellor at law and have been admitted to practice in the courts of the State of Montana, and also in the United States circuit court of the ninth circuit for the district of Montana. I am likewise one of the attorneys for the above-named plaintiff in error. I have read the foregoing motion, and know the contents thereof, and the facts therein stated are true, to the best of my knowledge, information and belief.

W. E. CULLEN.

Subscribed and sworn to before me this 7th day of November, A. D. 1906.

[SEAL.] FERDINAND ESPEY,

Notary Public in and for the District of Columbia.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 402.

THE MONTANA MINING COMPANY, LIMITED, *Plaintiff in Error,*

vs.

THE ST. LOUIS MINING AND MILLING COMPANY OF MONTANA, *Defendant in Error.*

Motion for Certiorari for Diminution of Record Under Rule Fourteen.

To the above-named The St. Louis Mining and Milling Company of Montana, Defendant in Error, and Messrs. Arthur Brown, J. H. Ralston, M. S. Gunn, F. L. Siddons, W. E. Richardson, Thomas C. Bach, and Ira T. Knight, Counsel for Defendant in Error.

GENTLEMEN: Please take notice that we have filed in the office of the clerk of said Supreme Court a motion for a writ of certiorari in the above-entitled cause, copy of which motion is herewith served upon you, and that we will bring the said motion on to be heard in the court room of said Supreme Court in the city of Washington, District of Columbia, on Monday, the twelfth day of November, A. D. 1906, at the hour of 12 o'clock M., or as soon thereafter as counsel can be heard.

Very respectfully,

CHAS. J. HUGHES, JR.,
W. E. CULLEN,
A. B. BROWNE,
ALEXANDER BRITTON,
Attorneys for Plaintiff in Error.

Service of the foregoing notice and motion accepted this 7th day of November, 1906.

JACKSON H. RALSTON,
For Defendants in Error.